THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 19011 of 2006

Dated:11-12-2006

Between:

Sri Surapaneni Subhas Chandra Bose

..... PETITIONER

AND

The Chief Passport Officer,
Ministry of External Affairs,
New Delhi and two others.

.....RESPONDENTS

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO: 19011 of 2006

O R D E R:

This writ petition is filed seeking a declaration that the order dated 13-06-2005 passed by the second respondent-Regional Passport Officer, Secunderabad as confirmed by the first respondent by order dated 01-08-2006 is arbitrary and illegal.

The petitioner is a practicing advocate at Vijayawada, who made an application dated 13-07-2004 for issue of a passport. Pursuant thereto the second respondent by letter dated
02-02-2005 called upon the petitioner to furnish certain information with regard to a criminal case pending against him as revealed in the police report. The petitioner submitted his reply dated 02-03-2005 informing the second respondent that no criminal case is pending against him. Thereafter, the second respondent passed an order dated 13-06-2005 stating that the file relating to the petitioner's application is kept in abeyance. Aggrieved by the same, the petitioner preferred an appeal before the first respondent-Chief Passport Officer, under Section 11 of the Passports Act, 1967 (for short 'the Act') contending that the action of the second respondent keeping his application in abeyance amounts to refusal to grant passport. Though the petitioner was heard on 06-09-2005 in person, the first respondent failed to pass any final orders and therefore, the petitioner was constrained to file W.P.No.12904 of 2006. The said writ petition was disposed of by this Court on 27-06-2006 directing the first respondent to dispose of the petitioner's appeal within a period of four weeks. Thereafter, the first respondent by order dated 01-08-2006 dismissed the petitioner's appeal. Hence, this writ petition.

I have heard the learned counsel for the petitioner as well as the learned Additional Standing Counsel appearing for the respondents.

The learned counsel for the petitioner contended that even assuming that the petitioner's case was not recommended by the Commissioner of Police for issuing passport, the same cannot be a ground for keeping the application of the petitioner in abeyance since under the provisions of either the Act or the Rules made thereunder, such police report is not mandatory. It is also contended that since the petitioner's case did not fall under any of the grounds mentioned under Section 6 of the Act, and since the petitioner did not incur any disqualification, the action of the respondents in not issuing passport is arbitrary and illegal.

In the counter affidavit filed by the third respondent, it is stated that pursuant to the application made by the petitioner for issuance of passport, a verification report was sent by the Commissioner of Police vide letter dated 06-01-2005 stating that though the petitioner was figured as accused in four cases, all the said cases ended in acquittal. Though there is nothing adverse on record, in view of his criminal antecedents and the ideology he was propagating it was felt that there is a possibility of misuse of the passport if issued. It is further stated that the State Government imposed ban on CPI (Maoists) and its frontal organizations, which is continuing up to 17-08-2007. Though, Andhra Pradesh Civil Liberties Committee (APCLC) is not banned and is not a front organization of CPI (Maoists), admittedly the petitioner is holding the office of President of APCLC and he was nominated by the Government of Andhra Pradesh vide G.O.Rt.No.5607 dated 30-09-2004 as a member of the monitoring committee for the peace talks between the Government and CPI (Maoists). Hence, his case was not recommended for issuance of passport and accordingly, a factual report was submitted to the second respondent, who is competent authority to take a final decision.

The second respondent filed a separate counter affidavit stating that since the report submitted by the third respondent-Commissioner of Police was found adverse in nature and did not favour the grant of

passport to the petitioner, the impugned orders were rightly passed.

From the material on record, it is clear that no criminal cases as such are pending against the petitioner as on today. However, it cannot be said that the second respondent is bound to grant the passport.

Under Section 5(2) of the Act, on receipt of an application for issue of passport, the passport authority after making such enquiry may either issue or refuse the passport. Sub-section (3) of Section 5 of the Act requires that while making an order refusing to issue the passport, the passport authority shall record the reasons for making such order and furnish to the applicant a copy of the same on demand.

Section 6 of the Act enumerates the grounds on which the passport authority shall refuse to issue a passport. It would be relevant to extract Section 6, which runs as under:

6. Refusal of passports, travel documents, etc.: (1) subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any country under clause (b) or clause (c) of sub-section (2) of section 5 on anyone or more of the following grounds, and on no other ground, namely:

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India;

(b) that the presence of the applicant in such country may or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country;

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause © of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely:-

(a) that the applicant is not a citizen of India;

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India;

(c) that the departure of the applicant from India may or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may or is likely to, prejudice the friendly relations of India with any foreign country:

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted

by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

In the case on hand, in the verification report submitted by the third respondent-Commissioner of Police, it is concluded as under:-

> "Though at present there is nothing as per record to negate his case, his criminal antecedents and the ideology of the group he is representing make him undesirable for the grant of passport facilities."

The above observations made by the third respondent would undoubtedly fall under grounds (a) to (d) of sub-section (1) of Section 6 of the Act. Hence, merely because no criminal cases are pending against the petitioner as on today, it cannot be contended that the second respondent is bound to issue the passport. The language of Section 5 read with Section 6 of the Act makes it very clear that the power conferred on the passport authority involves an element of discretion and having regard to facts and circumstances in a given case it is always open to him to refuse to issue the passport for the reasons to be recorded in writing.

As noted above, the verification report submitted by the third respondent was adverse in nature and the said fact was communicated to the petitioner.

In the light of the material placed before this Court, it cannot be said that the decision of the second respondent as confirmed by the first respondent was without application of mind to the relevant factors. The discretion exercised by the second respondent is neither

unreasonable nor can be said to be based on extraneous considerations warranting interference by this Court under Article 226 of the Constitution of India.

Accordingly the writ petition is dismissed. No costs.

G. ROHINI, J

Dated:11-12-2006
KLP